



IN THE MATTER OF:

Complainant,

and

**PENTAPLEX, CHUCK LAWRENCE,  
DENNIS JONES, and FRAN  
THIBAUT,**

Respondents.

[illegible]

CHARGE NO: 1996CF0559  
EEOC NO: 21B953371  
ALS NO: 11055

This matter is ready for a Recommended Liability Determination pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On April 10, 2000, Administrative Law Judge Blunk entered an order that granted Complainant's motion for default judgment as to Respondents PentaPlex, Lawrence, Jones and Thibault due to the failure of said Respondents to file a verified Answer or otherwise appear in this matter. On June 21, 2000, Complainant appeared with counsel for a damages hearing before Judge Blunk. Prior to the hearing Complainant filed a motion seeking to dismiss with prejudice Respondent Thibault which was taken with the case. The damages hearing then proceeded against Respondents PentaPlex and Lawrence.<sup>1</sup> Neither of these Respondents appeared at the damages hearing.

On October 10, 2000, Chief Administrative Law Judge Larson entered an order that noted that Judge Blunk had left the employ of the agency prior to drafting the decision in this matter and ultimately transferred the case to Judge Gidcumb. In the Order, Chief Judge Larson observed that because there were no credibility issues in the

uncontested damages hearing, the restrictions against transferring the case to another administrative law judge found in **Gilchrist v. Human Rights Commission**, 312 Ill.App.3d 597, 728 N.E.2d 566, 245 Ill.Dec. 484 (1<sup>st</sup> Dist, 1<sup>st</sup> Div. 2000) did not apply. Moreover, because Judge Gidcumb has been on an extended medical leave of absence, the matter was transferred to me.

### **Findings of Fact**

Based upon the record in this matter, I make the following findings of fact:

1. On February 14, 1992, Complainant was hired by Respondent PentaPlex as a receptionist.
2. At all times pertinent to the Complaint, Complainant performed her job consistent with Respondent PentaPlex's standards.
3. At all times pertinent to this Complaint, Respondent Lawrence was the sole owner of Respondent PentaPlex and was a supervisor to Complainant.
4. Between March 1, 1995 and September 1, 1995, Respondent Lawrence often touched Complainant's breasts and arm and asked her: "Can I feel your tits?"
5. Between March 1, 1995 and September 1, 1995, Respondent Lawrence: (a) commented to Complainant "boy, you're all sweaty[,] are your nipples wet too?"; (b) offered Complainant \$100 for sex; (c) on a daily basis called Complainant "slut", "bimbo", and "miserable bitch" and would slap Complainant on the posterior and say "look at the ass on her"; (d) on a weekly basis asked Complainant "did the batteries run down on your vibrator-why are you so crabby?"; and (e) asked Complainant if she was wearing a bra to work and stated "Look, you can see her nipples; she's a horny bitch".
6. Between March 1 and September 1, 1995, certain supervisors at Respondent PentaPlex made the following comments to Complainant: (a) "don't do

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<sup>1</sup> At the time of the damages hearing, Respondent Jones had filed a bankruptcy petition, and thus the damages hearing did not proceed against him.

anything I wouldn't do" after asking Complainant if she was "going to get laid" on the weekend; (b) "oh, do that again" when Complainant yawned; (c) "can we get you girls drunk and take advantage of you?"; (d) "how far can you put that in your mouth"; (e) "See my gray hairs? Want to see how many I have down there?"; (f) "what's that" after grabbing Complainant's chest; (g) "did you get any Mexican dick?"; and (h) "I've got a raise right here" after Complainant asked for a raise in salary and after the declarant/supervisor grabbed his crotch.

7. Between March 1, 1995 and September 1, 1995, Complainant complained to management about the comments and conduct listed in Finding of Fact No. 6.

8. At some point in September of 1995 Complainant quit Respondent PentaPlex because of the sexual harassment that occurred in the workplace. At the time of her termination, Complainant was working 40 hours per week and earning \$7.50 per hour.

9. After working some temporary jobs subsequent to her termination, Complainant found a job on April 22, 1996 working 40 hours per week at \$10.00 per hour.

10. Subsequent to her resignation from Respondent PentaPlex, Complainant experienced problems sleeping and feelings of paranoia that stemmed from the sexual harassment she experienced at Respondent PentaPlex. Complainant also suffered from low self-esteem arising out of the conduct and comments of her supervisors.

11. On September 7, 1995, Complainant filed on her own behalf a Charge of Discrimination against Respondents PentaPlex, Lawrence and other supervisors alleging that she had been the victim of sexual harassment and constructive discharge arising out of her employment.

12. On October 5, 1999, the Department of Human Rights filed a Complaint against Respondents PentaPlex, Lawrence and other supervisors, alleging on behalf of Complainant that she had been aggrieved by practices of sexual harassment.

13. On April 10, 2000, Judge Blunk entered an Order finding Respondents PentaPlex, Lawrence and other supervisors in default for failing to file a verified Answer to the Complaint or to otherwise make an appearance in this matter.

14. As a result of the sexual harassment perpetrated personally by Respondent Lawrence and other members of PentaPlex management on Complainant, Complainant has suffered \$30,000 in emotional damages.

### **Conclusions of Law**

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent PentaPlex is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent Lawrence is an “employee” as that term is defined under the Human Rights Act.

4. Complainant has established a *prima facie* case of sexual harassment and constructive discharge.

5. The Order of April 10, 2000 finding Respondents PentaPlex and Lawrence in default is incorporated into this Order by reference.

### **Determination**

Complainant has established by a preponderance of the evidence that she was the victim of sexual harassment and constructive discharge in violation of section 2-102(D) of the Human Rights Act.

### **Discussion**

On April 10, 2000, Judge Blunk entered a default order against Respondents PentaPlex and Lawrence due to their failure to file a verified Answer or to otherwise appear in this matter. As a result, the allegations made against these Respondents in the instant Complaint alleging sexual harassment and constructive discharge are deemed admitted. See section 5300.640(f) of the Commission's Procedural Rules, 56 Ill. Admin. Code, Ch. XI, §5300.640(f).

In reviewing the admitted allegations contained in the Complaint, I note that Complainant has asserted a continuous pattern of offensive touching and comments that establishes the existence of a serious and pervasive hostile work environment permeated by requests for sexual favors and other related sexual conduct. (See section 2-101(E) of the Human Rights Act (775 ILCS 5/2-101(E).) For example, Complainant contended that Respondent Lawrence repeatedly touched her breasts, as well as called her a "slut", "bimbo" and "miserable bitch". Moreover, the admitted allegations of the Complaint indicate that Respondent Lawrence frequently touched Complainant's posterior and commented about Complainant's physical characteristics. Others in management also called Complainant similar names and touched Complainant in an offensive manner. Too, the pattern of Respondents' conduct as contained in the admitted allegations adequately demonstrates that Complainant was constructively discharged in September of 1995.

Typically, complainants prevailing on a claim for constructive discharge have an opportunity to obtain his or her prior position with the respondent, as well as an award for lost wages caused by having to leave their positions in order to search for other employment. However, Complainant has not sought reinstatement to her former position with Respondent PentaPlex (perhaps due to the fact that she obtained a higher paying job shortly after she left Respondent PentaPlex) and has not specifically sought a

lost wage remedy. Thus, I will not recommend that Respondent PentaPlex provide Complainant with a comparable position to the one she vacated as part of her remedy in this action or pay her any lost wages.

However, the focus of Complainant's request during the damages hearing was on her claim for emotional damages, which she calculates at \$30,000. My review of the admitted allegations and Complainant's testimony at the damages hearing supports this figure, given the nature of the pervasive and demeaning conduct and comments directed by Respondent Lawrence and others to her. Moreover, the suggested figure is in line with other Commission awards on claims of sexual harassment and constructive discharge. Specifically, in **Booker and Able Detective Agency**, \_\_\_ Ill. HRC Rep. \_\_\_ (1995SF0475, April 23, 1999), complainant was awarded \$35,000 in emotional damages under similar circumstances that indicated that Complainant's supervisor repeatedly walked behind her and called her a "bitch", "stupid little bitch" or "fucking bitch". Moreover, like the complainant in **Booker**, Complainant in the case at bar testified to similar symptoms of emotional distress such as difficulty of sleeping and feelings of anxiety that arose out of the conduct of Lawrence and other managers. As a result, I find that Complainant is entitled to \$30,000 in emotional damages.

#### **Recommendation**

In view of the foregoing, it is recommended that the Commission enter an Order which:

1. Grants Complainant's motion for default judgment on liability against Respondents PentaPlex and Lawrence;
2. Grants Complainant's motion to dismiss Respondent Thibault from the case.
3. Requires Respondents PentaPlex and Lawrence to pay Complainant the sum of \$30,000 in emotional damages;

4. Directs Respondents PentaPlex and Lawrence to clear from Complainant's personnel record all references to the filing of the Charge of Discrimination, and the subsequent disposition thereof;

5. Directs Respondents PentaPlex and Lawrence to cease and desist from sexual harassment of its employees and co-workers.

6. Directs Respondents PentaPlex and Lawrence to pay Complainant's attorney's fees and costs as set forth in a motion and detailed affidavit and any other necessary supporting materials required by the Commission's decisions in **Clark and Champaign National Bank**, 4 Ill. HRC Rep. 193 (1982) and **Schoenberg and Grundy Special Education Cooperative**, 9 Ill. HRC Rep. 192 (1982), to be filed within 21 days of the date of this Recommended Liability Decision. Failure to file such a motion will be taken as a waiver of Complainant's claim for fees. Following the filing of such a motion, pursuant to Section 5300.785 of the Rules and Regulations of the Commission, 56 Ill. Admin. Code, Ch. XI, §5300.785, Respondents shall have 21 days in which to file a written response. Failure to file such a response will be taken as evidence that Respondents do not contest the amount of fees sought.

7. The recommendations set forth in paragraphs one through five are stayed, pending the issuance of a Recommended Order and Decision addressing the issues of attorney's fees and costs.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 29<sup>TH</sup> DAY OF March, 2001